

Agenda Item Form

Agenda Date: 09/14/04

Districts Affected: All

Dept. Head/Contact Information: Human Resources, Terry A. Bond, (915) 4509

Type of Agenda Item:

- | | | |
|---|---|--|
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Staffing Table Changes | <input type="checkbox"/> Board Appointments |
| <input type="checkbox"/> Tax Installment Agreements | <input type="checkbox"/> Tax Refunds | <input type="checkbox"/> Donations |
| <input type="checkbox"/> RFP/ BID/ Best Value Procurement | <input type="checkbox"/> Budget Transfer | <input type="checkbox"/> Item Placed by Citizen |
| <input type="checkbox"/> Application for Facility Use | <input type="checkbox"/> Bldg. Permits/Inspection | <input type="checkbox"/> Introduction of Ordinance |
| <input checked="" type="checkbox"/> Interlocal Agreements | <input type="checkbox"/> Contract/Lease Agreement | <input type="checkbox"/> Grant Application |
| <input type="checkbox"/> Other _____ | | |

Funding Source:

- ☐ General Fund
- ☐ Grant (duration of funds: _____ Months)
- ☐ Other Source: _____

Legal:

☒ Legal Review Required Attorney Assigned (please scroll down): Lupe Cuellar ☒ Approved ☐ Denied

Timeline Priority: ☒ High ☐ Medium ☐ Low # of days: _____

Why is this item necessary:

In order to comply with Federal, State and Local Statutes, and Civil Service Commission Rule 25, Driver Safety Standards, the Human Resources Department needs to conduct driver record checks on all employees that operate a motor vehicle for the City of El Paso.

Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:

N/A

Statutory or Citizen Concerns:

None anticipated

Departmental Concerns:

None anticipated



Human Resources Department

MEMORANDUM

September 8, 2004

TO: Jim Martinez, Interim City Manager

From: Terry A. Bond, Director *TAB*

Re: Agreement for Release of Driver Records through Texas Department of Public Safety

In order to comply with Federal, State and Local Statutes, and Civil Service Commission Rule 25 on Driver Safety Standards, the Human Resources Department needs to conduct driver record checks on all employees that operate a motor vehicle. The Texas Department of Public Safety will set a limit to the number of records that the City of El Paso can obtain on a quarterly basis.

This Governmental Entities agreement with the Texas Department of Public Safety will allow the City of El Paso to obtain these driver record checks in an electronic format through Texas Online at no cost to the City, or at a minimal cost if the City exceeds the quarterly limit.

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign an agreement between the **CITY OF EL PASO** and the **TEXAS DEPARTMENT OF PUBLIC SAFETY** for the acquisition of motor vehicle records pursuant to the Motor Vehicle Records Disclosure Act.

ADOPTED this 14th day of September, 2004.

THE CITY OF EL P ASO

Joe Wardy
Mayor

ATTEST:

Richard Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Guadalupe Cuellar
Deputy City Attorney

AGREEMENT FOR RELEASE OF DRIVER RECORDS
TO GOVERNMENTAL ENTITIES

Parties:

The agreement is made between the Texas Department of Public Safety, 5805 N. Lamar, Austin, Texas 78752, herein after "DPS", and

CITY OF EL PASO, TEXAS

Entity Name, herein after "Government Entity"

2 CIVIC CENTER PLAZA, EL PASO, TX 79901-1196

Address

WHEREAS, Texas law authorizes DPS to provide driver and related records individually and in bulk for specified permissible purposes; and

WHEREAS, Texas law authorizes DPS to establish an Electronic System, to provide the release of driver status information, three-year driving record and additional Driver Records for commercial motor vehicle driver license holders, and

WHEREAS, state and federal law, including the federal Driver Privacy Protection Act of 1994 (PL 103-322; 18 USC § 2721 et seq.) and Texas' driver privacy protection legislation of 1995 (Tex. Trans. Code §730) extend privacy protection to personal information maintained in the files of the state motor vehicle agencies such as the Texas DPS; and

WHEREAS, the Driver Privacy Protection Act of 1994, as amended by PL 106-69 (18 USC §2721, as amended), presently prohibits state motor vehicle agencies from selling personal information in bulk for purposes of marketing, solicitations, and certain surveys unless a state has first obtained express consent from each individual about whom listed personal information pertains, and

WHEREAS, the Texas State Legislature has refrained from enacting any express consent system for use in Texas; and

WHEREAS, Texas law requires each prospective Government Entity under the Electronic System, before receiving any records, to execute a written agreement or contract containing such safeguards as DPS considers necessary or reasonable to ensure that all information and records obtained are used only for permissible purposes and that the rights of the individuals and DPS are protected; and

WHEREAS, the Government Entity, desires to obtain driver status checks or three-year driving record and additional Driver Records for commercial motor vehicle driver license holders, including personal information, from DPS,

IT IS AGREED, THEREFORE, that DPS shall deliver to the Government Entity the Driver Records in an electronic format, subject to the following terms and conditions:

1. Definitions:

- a. "Driver Record" means a record that pertains to a motor vehicle operator or driver license or permit, or identification document issued by DPS.
- b. "Electronic System" means the process by which DPS supplies the Driver Records in an electronic format through TexasOnline, including batch and Web-based applications.
- c. "Personal information" means information that identifies a person, including the driver identification number, name, date of birth, and address.

2. Certification of Permissible Use(s):

The Government Entity, by signing this agreement, hereby certifies compliance with all current provisions of the federal Driver Privacy Protection Act of 1994, as amended by PL 106-69 (18 USC §2721 et seq.), with applicable

Texas driver privacy protection legislation, and with all other state and federal laws applicable to this agreement. The Government Entity further certifies that his/her/its use of the record and information obtained under this contract is for the following permissible purpose(s) only and for no others:

Initial all that apply:

- JB 1. For use in connection with any matter of (a) motor vehicle or motor vehicle operator safety; (b) motor vehicle theft; (c) motor vehicle emissions; (d) motor vehicle product alterations, recalls, or advisories; (e) performance monitoring of motor vehicles or motor vehicle dealers by a motor vehicle manufacturer; or (f) removal of nonowner records from the original owner records of a motor vehicle manufacturer to carry out the purposes of the Automobile Information Disclosure Act, the Anti Car Theft Act of 1992, the Clean Air Act, and any other statute or regulation enacted or adopted under or in relation to a law included in the above.
- _____ 2. For use by a government agency in carrying out its functions or a private entity acting on behalf of a government agency in carrying out its functions.
- _____ 3. For use in connection with a matter of (a) motor vehicle or motor vehicle operator safety; (b) motor vehicle theft; (c) motor vehicle product alterations, recalls, or advisories; (d) performance monitoring of motor vehicles, motor vehicle parts, or motor vehicle dealers; (e) motor vehicle market research activities, including survey research; or (f) removal of nonowner records from the original owner records of motor vehicle manufacturers.
- JB 4. For use in the normal course of business by a legitimate business or an authorized agent of the business, but only to verify the accuracy of personal information submitted by the individual to the business or the authorized agent of the business and to obtain correct information if the submitted information is incorrect to prevent fraud by, pursuing a legal remedy against, or recovering on a debt or security interest against the individual.
- _____ 5. For use in conjunction with a civil, criminal, administrative, or arbitral proceeding in any court or government agency or before any self regulatory body, including service of process, investigation in anticipation of litigation, execution or enforcement of a judgment or order, or under an order of any court.
- _____ 6. For use in research or in producing statistical reports, but only if the personal information is not published, redisclosed, or used to contact any individual.
- _____ 7. For use by an insurer or insurance support organization, or by a self insured entity, or an authorized agent, of the entity, in connection with claims investigation activities, antifraud activities, rating or underwriting.
- _____ 8. For use in providing notice to an owner of a towed or impounded vehicle.
- _____ 9. For use by a licensed private investigator agency or licensed security service for a purpose permitted as stated on this page.
- JB 10. For use by an employer or an authorized agent or insurer of the employer to obtain or verify information relating to a holder of a commercial driver's license that is required under 49 U.S.C. Chapter 313.
- _____ 11. For use in connection with the operation of a private toll transportation facility.
- _____ 12. For use by a consumer-reporting agency as defined by the Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) for a purpose permitted under the Act.
- _____ 13. For any other purpose specifically authorized by law that relates to the operation of a motor vehicle or to public safety. Please provide statutory authority: _____

- 14. For use in the preventing, detecting, or protecting against identity theft or other acts of fraud. Prior to release of personal information, DPS may require additional information.

It is expressly understood that the Government Entity may not sell personal information obtained under this agreement to third parties for any purpose, but may furnish personal information without compensation for any purpose or use that is permitted by federal or state law if necessary to carry out the particular function for which the information was received. The Government Entity understands that it may not furnish personal information received under this agreement to any third party unless the third party certifies that the intended use of the information is permitted under this contract and state and federal law. The Government Entity further understands that violating this paragraph is grounds for immediate termination of this agreement under Paragraph 15.

3. Payments:

Pursuant to Texas Transportation Code §521.049, DPS cannot charge a fee for Driver Record information disclosed to law enforcement or other governmental agencies for an official purpose. However, there is an exception for records sold in bulk for research purposes. A Government Entity obtaining records for research must enter into a contract with DPS to receive Driver Record information.

This contract allows for the release of Driver Record information through the TexasOnline batch application, pursuant to the requirements of Paragraph 4, at no expense to the Government Entity. If the Government Entity desires to receive the records through the TexasOnline Web-based application or exceeds the TexasOnline batch application limitation set pursuant to Paragraph 4, the Government Entity is obligated to pay the TexasOnline service fee for each transaction. The TexasOnline Authority establishes the service fee for all transactions utilizing the TexasOnline System.

If the Government Entity utilizes the system in a manner that dictates the payment of the service fee, the payment will be handled in an electronic format established by BearingPoint, Inc. and the TexasOnline System. The Government Entity shall remit payment immediately upon receipt of billing. Failure to remit timely payment could result in termination of the contract, or could result in the denial of release of additional records until prior payments are received and processed.

4. Limitation on the number of records:

The Department has the authority to limit the number of records transferred to the Government Entity through the batch application without payment of a service fee. This limitation will be based on Government Entity's anticipated volume. The monthly use figure will be provided to the Government Entity in writing after the agreement for release of Driver Records has been approved and signed by the Department. The Department can alter the figure at any time upon notification to the Government Entity. The Government Entity must request a change in writing if they would like the Department to review their record limitation and increase the number of records authorized for release.

The record limitation will be set to allow the Government Entity to check, on a quarterly basis, the Driver Records of all employees who operate the entity's vehicles. If the records are needed for other purposes, those needs will be considered at the time the limit is set.

If during any month the Government Entity needs to exceed their preset record limit, they can continue to receive records upon payment of the service fee under the TexasOnline batch or browser applications.

Paragraph 4 does not apply to a Government Entity that chooses to utilize the Web-based application and agrees to pay the required service fees.

5. Acknowledgement and Disclaimer:

The Government Entity acknowledges that DPS is furnishing records and information "as is" and it makes no representation or warranty as to the accuracy of any record or the information furnished. DPS expressly disclaims responsibility for any failure to deliver records or information in a timely manner, or at all, in the event of staff shortages, failures of appropriations, breakdowns of equipment, compliance with new or amended laws, acts of authority exercised by a public official, acts of God, or other circumstances which may delay or preclude furnishing records and information in a timely fashion. DPS has no further responsibility or liability to the Government Entity

with respect to undelivered records and information and has no liability or responsibility whatsoever for delayed records and information.

6. Consumer Protection:

The Government Entity agrees that the records and information furnished under this agreement shall not be used to engage in any method, act, or practice that is unfair or deceptive, nor shall they be used for marketing or solicitations, or surveys not authorized by law.

7. Access to Information in Bulk:

The Government Entity agrees that no member of the public or any person outside the direct employ or control of the Government Entity shall be allowed direct access to records and information through the Government Entity under this agreement for any reason other than the Government Entity's intended and legitimate use of the records and information.

8. Record Creation and Retention:

If the Government Entity re-discloses any of the information or records obtained under this agreement to a third party, the Government Entity agrees to create records identifying each such person or entity who obtained personal information from the Government Entity and the legally permissible purpose for which the record or information was obtained. The Government Entity shall retain the records of identification and purpose for a period of not less than five (5) years following transfer of the information and or records to the third party.

9. Provide Copies of Records and Notification of Release:

If the Government Entity re-discloses any of the information or records obtained under this agreement to a third party, the Government Entity shall provide access to or copies of those records identifying each person or entity who obtained personal information from the Government Entity and the permissible purpose for which it was obtained to DPS upon request. DPS retains the right to require the records in any applicable format including electronic or paper. The Government Entity shall bear the expense of providing this information to DPS including any postage and/or shipping charges. The Government Entity will notify DPS of any inadvertent or unauthorized release of the Driver Record information obtained under this contract within two days of when the Government Entity knows or should have known of such unauthorized or inadvertent release.

10. Assignability:

The Government Entity may not assign, license, or transfer any of its rights, duties, and obligations under this agreement without the prior written consent of DPS.

11. Incorporation of Other Documents:

This agreement incorporates by reference the document entitled the "Agreement for Obtaining Electronic Driver Record Information" (Attachment A to the Agreement for Release of Driver Records), which provides DPS additional information about the Government Entity and its intended use for the Driver Record information.

This agreement also incorporates by reference the document entitled Record Release Limitation. This document provides the Government Entity the number of Driver Records it can receive in a quarterly period.

With the exception to the above listed documents, this agreement embodies the entire agreement between the Government Entity and DPS with relation to the transaction contemplated hereby, and there have been and are no other covenants, agreements, representations, warranties or restrictions between the parties other than those specifically set forth in the agreement.

12. BearingPoint, Inc. and the TexasOnline Driver Record System:

BearingPoint, Inc. is the duly authorized service agent of DPS responsible for processing electronically submitted Driver Record requests and delivering the Driver Records in a secure, electronic format utilizing the TexasOnline System. BearingPoint, Inc. is responsible for the operation of TexasOnline and obligated to specific performance level requirements established in the duly authorized Service Level Agreement entered by DPS and BearingPoint, Inc. As such, BearingPoint, Inc. has the authority to suspend any Governmental Entities account or access to

TexasOnline when such access compromises the operation of TexasOnline. Suspension of such account or access shall continue until the compromising condition is resolved, to the satisfaction of DPS.

13. Effective Date and Renewal:

This contract shall automatically renew on a yearly basis. However, either party may terminate this agreement upon thirty days written notice to the other party. Notice should be given to the contact person designated in Paragraph 19 of this contract. Notice is effective upon receipt or three days after deposit in the U. S. mail, whichever occurs first.

14. Cancellation:

Either party may cancel this agreement for any reason by giving the other party written notice of cancellation at least thirty (30) days prior to cancellation. If a party elects to cancel this agreement, all unfilled obligations, including the obligation to pay TexasOnline for any applicable service fees, shall remain in force.

15. Termination:

DPS may terminate this agreement in writing at any time for any reason. Without limiting the foregoing, DPS may immediately terminate this agreement, without notice for any violation of the terms of this contract or for any violation of any state or federal law or regulation relating to the information provided by DPS under this agreement. This includes but is not limited to failure to remit charges due in a timely fashion or for inappropriate use of data, such as use for marketing or solicitations. The Government Entity acknowledges that if this agreement is terminated for cause, DPS may refuse to provide records and information to the Government Entity in any format.

16. Change of Status:

The Government Entity may terminate this contract in writing at any time. This agreement will automatically terminate if the Government Entity ceases to exist, if the Government Entity substantially changes the nature of its business, or if the Government Entity ceases to qualify for the information under the permissible use(s) certified in Paragraph 2. The Government Entity, its successor in interest, or its personal representative will immediately notify DPS in writing of any change in status that would implicate this paragraph. If the contract is terminated under this paragraph, the Government Entity's successor in interest will be eligible to apply for and execute a new contract.

17. Amendments:

The Government Entity acknowledges that DPS may amend the terms and conditions of this agreement from time to time in order to accommodate changes in the records or information furnished under this agreement and for other reasons deemed appropriate by DPS. DPS agrees to notify the Government Entity in writing of the content of any amendment. The Government Entity can make no modification or amendment to this Agreement unless in writing and signed by both parties.

18. Indemnification:

To the extent authorized by the Constitution and laws of the state of Texas, the Government Entity agrees to indemnify and save harmless the State of Texas and DPS, and any of their officers, agents, or employees, with respect to any claim asserted against them under the federal Driver Privacy Protection Act of 1994, as amended (18 USC §2721 et seq.), Texas driver privacy protection legislation (Tex Trans Code §730, as amended), and other state or federal law pertaining to this agreement, for any act or omission attributable to the Government Entity, its officers, agents, and employees, and others who obtain information from the Government Entity.

19. Contact Information

The following contact person is designated by the Government Entity to receive all correspondence regarding this agreement:

Name: Terry A. Bond, Human Resources Director, City of El Paso

Address: 2 Civic Center Plaza

City, State, Zip Code: El Paso, TX 79901-1196

Telephone: (915) 541-4509

Fax: (915) 541-4220

Email address: **BondTA@elpasotexas.gov**

All correspondence to DPS regarding this contract must be mailed to the following address:

Texas Department of Public Safety
Driver Record Bureau
P.O. Box 4087
Austin, Texas 78773-0360

20. Governing Law and Jurisdiction:

This agreement shall be construed in accordance with the laws of the State of Texas. The Government Entity agrees that any dispute that arises under this agreement and cannot be amicably resolved by the parties shall be submitted to a court of competent jurisdiction in Travis County, Texas, to which jurisdiction the Government Entity hereby submits.

21. Signatory Authority:

The signatories hereby certify that they are authorized by their respective parties to execute this agreement as party representatives and to bind their respective principals hereto.

IN WITNESS WHEREOF, the representatives of the parties have affixed their signatures on the dates as written below.

CITY OF EL PASO
GOVERNMENT ENTITY

TEXAS DEPARTMENT OF PUBLIC SAFETY

N/A

SIGNATURE

SIGNATURE _____

N/A

NAME AND TITLE

NAME AND TITLE

DATE _____

DATE _____

CITY OF
EL PASO

ATTEST:

APPROVED AS
TO FORM:

APPROVED AS
TO CONTENT:

Joe Wardy
Mayor

Richarda Momsen
Municipal Clerk

Guadalupe Cuellar
Deputy City Attorney

Terry Bond
Human Resources Director

**GOVERNMENT ENTITY INFORMATION FORM
ATTACHMENT A
AGREEMENT FOR OBTAINING ELECTRONIC DRIVER RECORD INFORMATION**

Government Entity: City of El Paso

Contact Name: Terry A. Bond, Human Resources Director, City of El Paso

Address: 2 Civic Center Plaza

El Paso, TX 79901-1196

Contact Email Address: BondTA@elpasotexas.gov

Contact Telephone Number:

(915) 541-4509

Contact Fax Number:

(915) 541-4220

Nature of Entity's Activities:

Municipal Government

Intended use of Driver Record information obtained from the Texas Department of Public Safety:
Motor vehicle or motor vehicle operator safety; verification of accuracy of information

submitted by an individual to the City of El Paso, Texas; obtain/verify information relating
to holder of a commercial driver's license as required by 49 U.S.C. Chapter 313.

If the Government Entity releases the information obtained from the Department, please explain what safeguards and/or assurances are in place to meet requirements of this contract.

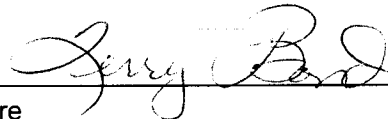
City of El Paso releases employee information only in accordance with applicable

Federal and State laws and statutes.

I hereby certify that I am authorized to make the foregoing statements and that the statements are true to the best of my knowledge. I understand that if any of the statements are willfully false, I am subject to criminal and civil penalties as well as the termination of the agreement to receive Driver Record information. I also agree to notify DPS if any information supplied on this form changes within 30 days from the date of such change. Failure to make such notification may result in the cancellation of the contract.

Terry A. Bond
Name

Human Resources Director
Title


Signature
9/1/04
Date

Record Release Limitation

Attachment B

Pursuant to the Agreement for Release of Electronic Driver Records to Government Entities, the Department will limit the number of records transferred utilizing the TexasOnline batch process without payment of the transaction service fee.

This limitation is based on Government Entity's stipulated anticipated volume. The record limitation will be set to allow the Government Entity to check the Driver Records of all employees who operate motor vehicles on a quarterly basis. This policy also allows for Driver Records that may be needed for other purposes – those needs must be specifically stated on this form.

City of El Paso

Government Entity name

Contact Information

Terry A. Bond, Human Resources Director

(915) 541-4509

Individual's name

Telephone number

2 Civic Center Plaza, El Paso, TX 79901-1196

(915) 541-4220

Address

Fax number

BondTA@elpasotexas.gov

Email address

Record Information

Number of employees that operate a motor vehicle as part of their job function: 6,200

Number of Driver Records reviewed quarterly for hiring practices: 300

Additional needs for Driver Records

(Must specifically detail the need for the record(s) and how many record(s) are needed in each quarter):

To ensure compliance with Federal, State and Local statutes, the City of El Paso needs

to conduct driver records checks on all employees that operate a motor vehicle (6,200 permanent employees per month and 100 new hires per month).

Number of records per quarter 18,900

Specific reason

Number of records per quarter _____

Specific reason

Number of records per quarter_____

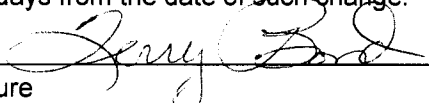
Specific reason

Number of records per quarter_____

Total Number of Records needed per Quarter: 18,900

I hereby certify that I am authorized to make the foregoing statements on behalf of the above named Governmental Entity and that the statements are true and correct to the best of my knowledge. I understand that if any of the statements are willfully false, the Governmental Entity that I represent is subject to the termination of the agreement to receive Driver Record information. I also agree to notify DPS if any information supplied on this form changes within 30 days from the date of such change.

Terry A. Bond
Name


Signature

Human Resources Director
Title

9/1/04
Date

The Department agrees to set the limit at the number specified above. The number of records that

City of El Paso can obtain quarterly is **18,900**

The Department has adjusted the number of records requested above because

The adjusted total number of records that_____

can obtain quarterly is _____.

Approved by the Department of Public Safety:

Signature

Date

Name and Title